

REMARKS

The Applicants hereby submit this Amendment and Request For Reconsideration in response to the Office Action mailed on 14 October 2008 for the above-identified patent application.

In the present Amendment, the Applicants cancel claims 34-43 in order to reduce the issues for allowability of the remaining claims; no claims have been added or amended. Therefore, claims 1-33 are pending in the present application for reconsideration.

In the Office Action of 14 October 2008, the Examiner rejected claims 1-43 of the present application under 35 U.S.C. § 103(a) based on Mishra et al. (U.S. Patent Application Publication No. US2002/0087716) and Bremer et al. (U.S. Patent Application Publication No. US2004/0022209). In response, the Applicants respectfully disagree with the rejections and submit that the claims 1-33 are allowable over the prior art for at least the following reasons.

1. The Relied Upon Art Fails To Teach Or Suggest A Technique Which Involves Receiving, Through A User Interface Of A Mobile Device, A Voice Call Request For Initiating A Voice Call From The Mobile Device, As Claimed.

In order to properly establish rejections under 35 U.S.C. § 103(a), the prior art must teach or suggest each and every limitation of the claims. In the present case, the relied upon art fails to teach or suggest every limitation of the present claims.

Claims 1-33 of the present application are specifically directed to techniques performed by a mobile communication device adapted to operate in a wireless communication network. The mobile device utilizes a radio traffic channel with the wireless network for the communication of user data for a connected data communication session. As claimed, this mobile device is the same device that receives,

via its user interface, the voice call request for the voice call, and performs the specifically recited acts in response to such receipt.

The Examiner alleges that the Mishra reference teaches or suggests the recited step. The Applicants respectfully disagree. Mishra does not teach or suggest the receipt of a voice request via *a user interface of a mobile device* for invoking the specifically recited actions.

In particular, the Examiner refers to paragraphs [0002] and [0009] of the Mishra reference. In paragraph [0002] of Mishra, it is taught that a wireless network (not a mobile station) rejects incoming voice call attempts: “[w]hile a mobile station is in an active packet data session, the wireless communication network may automatically reject any incoming voice call attempt to the mobile station.” Not only is the action in Mishra performed in the wireless network as opposed to the mobile station, the described action (i.e. the rejection of a voice call attempt) is actually the opposite of that which is claimed. Further, in paragraph [0009] of Mishra, it is taught that a Mobile Switching Center (MSC) sets up a packet data session with a mobile station for data services. However, what is claimed is the receipt of a voice call request for initiating a voice call – not a data service - for the mobile device. Therefore, with respect to either paragraph, the Examiner is wrong.

Based on these reasons alone, the Applicants respectfully request the Examiner to withdraw the rejections of claims 1-33 and submit that the claims are allowable over the prior art of record.

2. There Is No Teaching Or Suggestion Of A Mobile Communication Device Which Causes A Radio Traffic Channel Utilized For Carrying Data For The Connected Data Communication Service To Be Torn Down In Response To Receiving The Voice Call Request As Claimed.

As described above, claims 1-33 of the application are directed to techniques performed by a mobile communication device adapted to operate in a wireless communication network. The mobile device utilizes a radio traffic channel with the wireless network for the communication of user data for a connected data communication session. As claimed, this mobile device is the same device that receives, via its user interface, the voice call request for the voice call, and causes a radio traffic channel which is utilized for carrying data for the connected data communication service to be torn down in response.

The Examiner alleges that the Bremer reference teaches or suggests the recited step. The Applicants respectfully disagree. Bremer does not teach or suggest the tearing down of a radio traffic channel by any mobile device.

In particular, the Examiner refers to paragraph [0013] of Bremer, which generally describes a plain old telephone system (POTS) with Digital Subscriber Line (DSL) communications. In paragraph [0013], it is described DSL data communications are temporarily ceased upon detecting an open switching interval to allow on-hook CLASS signaling messages to pass over the subscriber loop. Here, no radio traffic channel is described to be torn down. In addition, no actions are taken by or within any mobile communication device.

Based on these reasons alone, the Applicants respectfully request the Examiner to withdrawn the rejections of claims 1-33 and submit that the claims are allowable over the prior art of record.

3. There Is No Adequate Reason Why One Ordinarily Skilled In The Art Would Have Modified The Teachings Of Mishra With The Teachings Of Bremer As The Examiner Fashions.

In order to properly establish rejections under 35 U.S.C. § 103(a), there must also be a proper obviousness/non-obviousness assessment that includes some adequate reasoning and/or demonstration that one ordinarily skilled in the art would have combined the teachings of the references to produce that which is claimed. When considering various prior art teachings for an obviousness/non-obviousness determination under §103,

the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or non-obviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. *Graham vs. John Deere Co. of Kansas City*, 383 U.S. 1, pp 17-18 (1966).

In this analysis, a functional approach may be taken which asks whether the improvement of the presented invention is more than a predictable use of prior art elements according to their established functions. It is also helpful and instructive to consider whether there is any teaching, suggestion, or motivation to combine the teachings of the references, either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art, in a flexible and non-rigid manner. The reason or evidence of a motivation to combine teachings need not be found explicitly in the prior art references, as one may also “look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person

having ordinary skill in the art.” *KSR Int’l Co. v. Teleflex Inc. et al.*, 127 S.Ct. 1727, at 1740-41.

In the present case, there is no adequate reason why one ordinarily skilled in the art would have modified the teachings of Mishra with the teachings of Bremer as the Examiner fashions.

As described above, the Examiner relies upon the teachings of both Mishra and Bremer. The Mishra reference generally describes techniques performed within a wireless network. On the other hand, the Bremer reference generally describes a Plain Old Telephone System (POTS) which supports Digital Subscriber Line (DSL) communications. In paragraphs [0012] and [0013] of Bremer, it is described DSL data communications are temporarily ceased upon detecting an open switching interval to allow on-hook CLASS signaling messages to pass over the subscriber loop. Such system includes a subscriber loop that is loaded with at least one load coil.

As apparent, the environments of Mishra and Bremer are very different. It is not proper to combine nonanalogous prior art. See e.g. *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In Bremer, there is no focus on wireless networks but rather only the Plain Old Telephone System (POTS). There are no radio traffic channels established between any mobile device and any wireless network. No actions are taken by or within any mobile device operative within a wireless network. Thus, there is little link between the teachings of Mishra and Bremer. Thus, it is difficult to understand why one ordinarily skilled in the art would have been motivated to modify the teachings of Mishra based on Bremer’s teachings.

Further, the Examiner has not articulated any adequate reason for combining the teachings. In fact, the Examiner’s reasoning fails to address the proper resulting network environment. In the Office Action, the Examiner states the following:

it would have been obvious ... in order for increasing the availability of digital subscriber

line service by allowing service to be offered to more subscribers without having to expend the costs to remove all the limitations from subscriber line transmission lines.

As apparent, the Examiner's reasoning is based on the Plain Old Telephone System (POTS) and DSL environment which is not the resulting claimed environment. The claimed environment relates to a wireless communication network having a mobile communication device operating therein.

Based on these reasons alone, the Applicants respectfully request the Examiner to withdrawn the rejections of claims 1-33 and submit that the claims are allowable over the prior art of record.

Since the prior art of record fails to teach or suggest each and every limitation of the claims, the rejections under 35 U.S.C. § 103(a) fail and the claims are allowable over the prior art. Other reasons for the allowability of claims 1-33 over the prior art are apparent to those of ordinary skill in the art, and are not outlined herein due to the sufficient reasons for allowability already provided above.

Thank you. Please feel free to contact the undersigned if it would expedite prosecution of the application.

Respectfully Submitted,

/John J. Oskorep/

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JOHN J. OSKOREP
Reg. No. 41,234

JOHN J. OSKOREP, ESQ. LLC
ONE MAGNIFICENT MILE CENTER
980 N. MICHIGAN AVENUE, SUITE 1400
CHICAGO, ILLINOIS 60611 USA

Telephone: (312) 222-1860
Fax: (312) 475-1850